

FILED  
MISSOULA, MT

2007 APR 4 AM 9 46

PATRICK E. DUFFY

BY \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

DEBRA ELLIS,	)	CV 06-48-M-CSO
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Ellis brings this action under 42 U.S.C. § 405(g) seeking judicial review of an administrative law judge's ruling upholding the Commissioner on Social Security's decision denying Ellis' application for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433, and for supplemental security income benefits under Title XVI of the Act, 42 U.S.C. §§ 1381-1383c.

United States Magistrate Carolyn S. Ostby reviewed the

administrative law judge's (ALJ) finding that Ellis is not disabled within the meaning of the Social Security Act. Judge Ostby found that the ALJ relied on sufficient evidence in deeming Ellis' testimony not entirely credible, and that the ALJ properly relied upon a 2002 residual functional capacity assessment in ascertaining Ellis' current functional capacity. Judge Ostby rejected Ellis' argument that the ALJ placed undue reliance on the Medical-Vocational Guidelines, and found no error in the ALJ's reliance on the vocational expert's testimony. On the basis of her findings, Judge Ostby recommends summary judgment in favor of the Commissioner.

The parties did not timely object to Judge Ostby's Findings and Recommendations and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error.

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

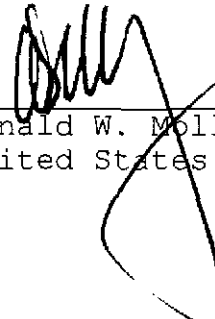
I can find no clear error with Judge Ostby's Findings and Recommendations and adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Commissioner's motion for summary judgment (Doc. No. 13) is GRANTED, and the Commissioner's decision is AFFIRMED.

The Clerk of Court is instructed to enter judgment affirming

the Commissioner's decision pursuant to sentence four of 42  
U.S.C. § 405(g).

DATED this 4<sup>th</sup> day of April, 2007.

  
\_\_\_\_\_  
Donald W. Molloy, Chief Judge  
United States District Court